

Applicants: Cornelia J. Forster et al.
Application No.: 10/632,340

REMARKS

The Claim Amendments

Applicants have amended claim 1 to recite that R^y is ethyl, cyclopropyl, tert-butyl, or isopropyl. As a result, applicants have canceled claim 2 to avoid redundancy. Applicants have also amended claims 3 and 4 to be proper dependent claims. Support for these amendments may be found in the specification as originally filed (see e.g., page 11, paragraph [0038]).

Applicants have amended claim 12 to delete the compounds that do not fall within the scope of the amended claims.

Applicants have amended claim 18 to add “an effective amount of.”

Applicants have amended claim 24 to recite compound I-1 only.

The Obviousness-Type Double Patenting Rejection

The Examiner has rejected claims 1-4, 7-14, 18, 23, and 24 under the judicially created doctrine of obviousness-type double patenting as allegedly being unpatentable over claims 1-15 of United States Patent 6,696,452 (hereafter “the ‘452 patent”). Applicants traverse.

Applicants respectfully submit that the amended claims are not obvious in light of the ‘452 patent. The ‘452 patent does not teach or suggest the particular combination of substituents recited in the genus of the amended claims.

The Examiner has pointed to several compounds in the ‘452 patent contending that they “differ only in not having a nitrogen in the indazole ring” (September 28, 2006 Office Action, page 7; February 26, 2007 Office Action, page 3). Applicants respectfully submit that these compounds (pointed out by the Examiner) also differ from the claimed compounds in that they contain either a 6-membered ring (cyclohexyl, piperidine, and piperazine), an alkylamine (substituted ethylamine), or a methyl group at the R^y position. The amended claims, on the other hand, recite R^y as ethyl, cyclopropyl, tert-butyl, or isopropyl. None of the compounds in the ‘452 application contain ethyl, cyclopropyl, tert-butyl, or isopropyl at the R^y position.

Applicants: Cornelia J. Forster et al.
Application No.: 10/632,340

Accordingly, the '452 patent does not suggest the desirability of the combination of

- R^y is ethyl, cyclopropyl, tert-butyl, or isopropyl; and
- the amino-linked pyrazolopyridine substituent at the 4-position of the pyrimidine.

A person of skill in the art would not have recognized the benefits of combining these elements to arrive at the compounds of the present claims. Applicants' claims are therefore not obvious in view of the '452 patent.

Accordingly, applicants request that the Examiner withdraw this double patenting rejection.

CONCLUSION

Applicants request that the Examiner enter the above amendments, consider the accompanying remarks, and allow the claims to pass to issue. If the Examiner believes that a telephone call would expedite prosecution, the Examiner is invited to contact the undersigned at any time.

Respectfully submitted,

/Jennifer G. Che/
Jennifer G. Che (Reg. No. 58,035)
Lisa A. Dixon (Reg. No. 40,995)
Attorneys for Applicants
Vertex Pharmaceuticals Incorporated
130 Waverly Street
Cambridge, Massachusetts 02139
Tel: (617) 444-6525
Fax: (617) 444-6483